

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 PORTLAND DIVISION

4 UNITED STATES OF AMERICA,)

5 Plaintiff,)

Case No. 3:15-cr-00438-JO

6 v.)

7 October 22, 2018

8 WINSTON SHROUT,)

9 Defendant.)

Portland, Oregon

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13 SENTENCING

14 TRANSCRIPT OF PROCEEDINGS

15 BEFORE THE HONORABLE ROBERT E. JONES

16 UNITED STATES DISTRICT COURT SENIOR JUDGE
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TRANSCRIPT OF PROCEEDINGS

(October 22, 2018)

(In open court:)

THE COURT: Good morning, everybody.

MR. WEXLER: Good morning, Your Honor.

MR. LANGSTON: Good morning, Your Honor.

THE COURT: Have a seat, please.

We'll hear from the government.

MR. WEXLER: Yes, Your Honor. Good morning. We're here in the matter of the United States v. Winston Shrout, 3:15-cr-438, for the purpose of sentencing.

If I may, Your Honor, the Court has the government's detailed brief. It's certainly not my intention today to read that brief into the record, but I do want to highlight for the Court some areas that I believe would be helpful for the Court to focus on when considering a sentence in this case.

I want to start just by reiterating what the government's recommendation is in this case, and that is 20 years of imprisonment followed by five years of supervised release, with special conditions as outlined in the government's sentencing memorandum, and an order of restitution to the Internal Revenue Service for \$191,226.10.

Now, not surprisingly, the defense disagrees with the government's recommendation. I think the first point of disagreement appears to be around the calculation of loss and

1 how the Court should handle that. The defendant's position is
2 that loss in this case is only approximately \$150,000, which is
3 related to the defendant's failure to file and pay taxes and
4 that there's essentially no other harm. But that position is
5 incorrect for two reasons. First, the intended loss in this
6 case is significantly higher, and both the sentencing
7 guidelines and Ninth Circuit case law are clear that the Court
8 should consider intended loss when applying the guidelines.
9 And this includes even where the defendant's fraud was
10 impossible or unlikely to occur or where the defendant's
11 fraudulent intent was thwarted.

12 And there was significant evidence at trial, including the
13 defendant's own admissions, that he intended for his fraud to
14 work. And even if the defendant's -- even the defendant's
15 sentencing memo implies that the loss was intended to occur.

16 I mean, why else would the defendant focus on his supposed
17 beneficent motivations for doing the conduct? Why do the
18 conduct at all if you're not intending for it to work, if
19 you're not intending for the loss to occur?

20 So the Court can and should include the intent of the
21 defendant's fraud even if he never succeeded or couldn't have
22 succeeded.

23 And the second reason is that the actual harm in this case
24 is really closer to \$30 million if the Court considers relevant
25 conduct.

1 Now, the guidelines and the Ninth Circuit both state that
2 the Court can consider conduct that isn't charged or is not an
3 element of the conviction if it was part of the same course of
4 conduct or common scheme or plan as the offenses of conviction,
5 and the Ninth Circuit specifically says to focus on similarity,
6 regularity, and temporal proximity.

7 The defendant's seminars, which were a large part of the
8 government's case, weren't limited to promoting and teaching
9 the use of fictitious financial instruments. The defendant
10 also promoted other fraudulent schemes, including a scheme
11 known as the false form 1099-OID scheme, which the --
12 essentially involved the filing of false tax returns using a
13 fraudulent IRS form, and the government's brief goes into a
14 little bit more detail as to what the OID scheme is essentially
15 about.

16 And the defendant's promotional activity resulted in a
17 number of related convictions, including family, friends, and
18 customers. The government provided a list of approximately two
19 dozen cases -- that was attachment C to the government's
20 sentencing memorandum -- where individuals used portions of the
21 defendant's schemes learned through attending a seminar,
22 viewing or reading a product, such as a video or a book, or
23 receiving one-on-one coaching. And those cases defrauded the
24 federal government out of at least \$30 million, and that's the
25 amount of ordered restitution. That's real harm.

1 And that conduct only includes cases where there was a
2 federal tax nexus. It doesn't include any cases that may have
3 occurred at the state level. It doesn't include any cases that
4 may have not had a tax nexus, such as mortgage fraud or bank
5 fraud.

6 THE COURT: What does it include?

7 MR. WEXLER: It includes cases -- a number of cases
8 related to the OID scheme and a number of cases related to the
9 fictitious -- filing of fictitious instruments.

10 THE COURT: You now say 30 million loss?

11 MR. WEXLER: Yes, sir.

12 THE COURT: Loss to whom?

13 MR. WEXLER: Loss to the federal government,
14 Your Honor. I think, in some of those cases, it may have been
15 third-party loss to banks, but essentially it's loss to the
16 federal government for -- either related to false tax returns
17 or --

18 THE COURT: Are you talking about the taxation of
19 30 million, or are you talking about the gross amount?

20 MR. WEXLER: I'm talking about the gross amount,
21 Your Honor. So this would have been, for example, someone
22 would have filed a false tax return using the OID scheme, and
23 they would have received a fraudulent refund as a result. Some
24 of these refunds were quite large, and so that's the loss. The
25 government is out that loss, and that was the basis of the

1 restitution.

2 MR. INIGUEZ: Your Honor, if I may, I wanted to wait
3 until my turn; however, I was going to object not only to the
4 government's exhibit, but to this evidence.

5 THE COURT: I know you do, and you wait your turn.

6 MR. INIGUEZ: Okay. Thank you, Judge.

7 THE COURT: Now, while we're on the -- I appreciate
8 that there's no -- all you can do is give it your best
9 estimate.

10 Do you know how many people over the years actually
11 attended these seminars?

12 MR. WEXLER: Your Honor, it would be in the hundreds.
13 I don't know the exact number, but I have reviewed records from
14 BEADS, which was the organization that ran a number of the
15 seminars, and I know that they received customer payments from,
16 at times, at least a hundred people for a given seminar.

17 THE COURT: That's just for one seminar.

18 MR. WEXLER: That's just one seminar, Your Honor.
19 This is conduct that went on for at least ten years. The
20 seminars went on for at least ten years.

21 THE COURT: I'm trying to get at a total number of
22 attendees, if you figured that out, of your best estimate.

23 MR. WEXLER: Your Honor, I -- I don't -- I would --
24 it would just be an estimate, and it would be in the hundreds.
25 I can't put together a better -- because, one, the government

1 is not aware of every seminar that the defendant gave.

2 THE COURT: Do you know approximately how many
3 seminars he conducted?

4 MR. WEXLER: Your Honor, if I can have a moment,
5 Special Agent Casey Hill, who's here today, who would have a
6 better sense of that number, if I can just ask him?

7 THE COURT: Of course.

8 MR. WEXLER: Thank you.

9 THE COURT: You know, he's welcome to pull over a
10 chair and sit at counsel table.

11 MR. WEXLER: Thank you, Your Honor.

12 THE COURT: Counsel, you can slide over just a little
13 bit. Thank you.

14 MR. WEXLER: Agent Hill's best estimate is, in terms
15 of organized seminars, 15 to 20 organized seminars that we know
16 of. I personally know of at least half a dozen private
17 coaching seminars where individuals hired the defendant to come
18 out to them and give them a personal private seminar. So we're
19 up to at least two dozen seminars that we know of.

20 THE COURT: Over the ten-year period?

21 MR. WEXLER: Over the ten-year period, beginning
22 in -- I will say the defendant's seminar activity has trailed
23 off in the last few years. So it's really between 2006 -- I
24 mean, the defendant has been under indictment. So I would say
25 between 2006 and 2015. So really an eight- to ten-year period.

1 And that, of course --

2 THE COURT: What was the charge? How much were the
3 participants charged?

4 MR. WEXLER: That would range, Your Honor, but the --
5 Your Honor saw the defendant's advertisement for a new seminar
6 during the competency hearing, and I believe the fee was \$575
7 for that. I would imagine the defendant charged different
8 rates over different periods.

9 Do you know?

10 From -- Agent Hill's recollection, it's from \$350 on up.

11 This, of course, Your Honor, is just related to the
12 seminars. The defendant also sold copies of his seminars
13 through DVD sales on his website, and the government's PayPal
14 records, which were part of the government's evidence at trial,
15 showed that the defendant made 1 -- over 1,000 individual
16 transactions -- individual sales of his material from April of
17 2014 to April of 2015. That's just a one-year period. Over
18 1,000 transactions of selling his material.

19 THE COURT: So to backtrack over the whole period of
20 time, you think it was how many people, again, over a ten-year
21 period went to seminars?

22 MR. WEXLER: Your Honor, I would say, conservatively,
23 2,000 seminars, 50 people per seminar. So about a thousand
24 people.

25 THE COURT: Now, how do you reach your 30 million?

1 MR. WEXLER: Your Honor, that's just the cases that
2 we provided you in attachment C, are cases Agent Hill --
3 Agent Hill can take the stand if Your Honor would prefer to
4 hear from him under oath, but Agent Hill sent out a national
5 inquiry to IRS investigative agents, asking if they had or were
6 aware of cases that had a connection to the defendant. And the
7 cases that we have listed in our attachment C are cases that
8 came back where those defendants either attended a seminar put
9 on by the defendant, they received a private seminar put on by
10 the defendant, they relied on videos or one-on-one coaching.
11 In all of those cases, there's a connection between the scheme
12 the defendant used and what the defendant was teaching, and
13 those defendants were in possession and were known to have
14 relied on that material.

15 THE COURT: I don't know how you jump from 100 plus
16 the sales at -- at the seminars to 30 million. How do you get
17 there?

18 MR. WEXLER: Well, Your Honor, that's the -- the
19 restitution amounts that are in those cases, that's the
20 30 million. So the government's argument is that the defendant
21 should be responsible, in part, for that loss because it was
22 his schemes that were relied on in those cases. So the
23 30 million is loss from those cases. So for --

24 THE COURT: How is it loss?

25 MR. WEXLER: From successful fraud, Your Honor.

1 These were restitution amounts that were ordered because
2 individuals succeeded in defrauding the government out of those
3 amounts. So they were ordered to pay restitution in the amount
4 of the fraud loss.

5 THE COURT: You mean, now -- let's just take your
6 maximum number of attendees again. State the number of
7 attendees over a ten-year period. It's how many?

8 MR. WEXLER: I would very conservatively say at least
9 a thousand, Your Honor.

10 THE COURT: A thousand. All right.

11 Out of a thousand, they paid so much to go to it.

12 MR. WEXLER: Yes, Your Honor.

13 THE COURT: That adds up to how much?

14 MR. WEXLER: Hundreds of thousands. The
15 government's -- I don't have the exact income amounts that the
16 government presented at trial to the defendant, but it would
17 have been hundreds of thousands over that period of time.

18 THE COURT: And then how do you get up to 30 million?

19 MR. WEXLER: So let me just take a step back,
20 Your Honor, because I think we're probably passing each other
21 here.

22 THE COURT: Well, I keep asking you the same
23 question. I'm trying to get a -- an amount that makes sense.

24 MR. WEXLER: Sure, Your Honor.

25 THE COURT: If we're talking about him charging, I --

1 I thought it would be many more seminars than what you propose,
2 from what I heard, so I'm -- we'll limit it to no more than
3 what you said.

4 Then so much income came from those, and you gave me a
5 figure in the hundreds of thousands. But I don't know how that
6 lines up. And then you jump to 30 million, and I don't know
7 how you get there from here.

8 MR. WEXLER: Yes, Your Honor. So the \$30 million
9 number is related to conduct that the government is arguing is
10 relevant conduct, and it's not -- and it's not loss associated
11 with the defendant charging at a seminar. It's loss associated
12 with a customer of the defendant's defrauding the government.

13 THE COURT: Okay. Now, how many customers defrauded
14 the government?

15 MR. WEXLER: Well, Your Honor, I don't have a certain
16 number of that, but what I do have is what we presented in
17 attachment C, which is at least two dozen cases that went to
18 indictment, trial, and conviction.

19 I don't -- I don't know who, beyond that, went and tried
20 to defraud the government. It could be -- if each individual
21 at the seminar did exactly what they were taught, then it could
22 be everybody. But I don't have a number for that.

23 What I do know is that the cases that we included in our
24 attachment C, I can confirm that all of those two dozen cases
25 had a connection to what the defendant taught and those people

1 learned it.

2 THE COURT: Those two dozen cases amount to how much?

3 MR. WEXLER: The restitution amounts that were
4 ordered in those cases total approximately \$30 million.

5 THE COURT: Okay. That's where I wanted to get.

6 So we're talking about the restitution amounts of the
7 people that were, quote, students of the defendant, applied his
8 tax evasion scheme, amounted to \$30 million.

9 MR. WEXLER: Yes, Your Honor.

10 THE COURT: To your best estimate?

11 MR. WEXLER: Yes, Your Honor.

12 THE COURT: Thank you. Go ahead with your
13 presentation.

14 MR. WEXLER: Thank you, Your Honor.

15 Loss, as the Court is well aware, is a significant part,
16 but it's also just one part of the Court's consideration when
17 determining an appropriate sentence. And the Court must also
18 consider factors under Section 3553(a).

19 The government feels that one of the most helpful factors
20 for this case is the need to avoid unwarranted sentencing
21 disparities. This leads me to the discussion of the similar
22 cases that the government presented in its brief and the one
23 case that the defense presented in its brief.

24 The first case that the government's presented was
25 *United States v. Teresa Marty*.

1 Now, in that case, Marty pleaded guilty to, in part,
2 defrauding the United States through the use of the false OID
3 scheme. This may actually help the Court understand sort of
4 the nexus.

5 And Ms. Marty received ten years in prison.

6 And the case -- Marty's case is related to this case
7 because Teresa Marty actually presented at the defendant's
8 seminar. She was a guest speaker at the defendant's Orlando
9 seminar, which was part of the government's case at trial,
10 where she talked about how to do the OID scheme.

11 And the government would suggest that the ten-year
12 sentence represents really a floor for the sentence in this
13 case because Ms. Marty was just a guest speaker at the
14 defendant's seminars. The defendant's conduct goes beyond that
15 for a number of years and a number of schemes and a number of
16 individuals.

17 And so Ms. Marty got ten years, but she was just a small
18 part of the defendant's overall fraudulent activity.

19 THE COURT: Any criminal history?

20 MR. WEXLER: In this case, Your Honor, or Ms. Marty?

21 None that I'm aware of in Teresa Marty's case, Your Honor.

22 THE COURT: Thank you.

23 MR. WEXLER: The next case that the government
24 provided was *United States v. Dennis Alexio*. In that case
25 Alexio was convicted of filing false returns that used the OID

1 scheme and the use of fictitious financial instruments, just
2 like the defendant here was convicted of.

3 And there was actually a client folder for Dennis Alexio
4 on the defendant's computer that was found during the search of
5 the defendant's computer, and it contained a false OID tax
6 return. And Dennis Alexio received 15 years, but he was just a
7 client of the defendant. Just one of hundreds.

8 But, finally, the government presented the case of
9 *United States v. James Timothy Turner*, and that's the case the
10 government feels most clearly reflects the defendant's conduct
11 in this case.

12 Turner received a sentence of 18 years for producing and
13 using fictitious financial instruments that totaled over
14 \$2 trillion. Now, the Court there also considered Turner's
15 other conduct, such as hosting seminars, where he spread his
16 fraud schemes; teaching others how to use fictitious
17 instruments, to pay tax and other debts, and failing to report
18 the income he received from customers from his seminars.

19 The Turner court was also persuaded by the fact that
20 Turner caused many of his customers to lose money as a result
21 of the schemes or to accrue criminal charges themselves, and
22 that's exactly like the defendant.

23 THE COURT: Now, we're talking about your allegation
24 of 300 fictitious financial instruments worth in excess of
25 \$100 trillion?

1 MR. WEXLER: Yes, Your Honor. Those instruments were
2 found on the defendant's computer. Mr. Kerr testified at trial
3 as to those instruments. The government would argue that under
4 the guidelines they can be considered as relevant conduct.

5 THE COURT: So you're -- thank you.

6 MR. WEXLER: But the connection between the *Turner*
7 case and this case is -- is -- goes beyond just the fictitious
8 instruments, as I just mentioned.

9 In fact, the government provided to the Court in its brief
10 the intelligence report from the Southern Poverty Law Center
11 from 2010 that labeled both Timothy Turner and the defendant
12 here as leaders of the same sovereign citizen movement for
13 promoting the same schemes and doing essentially the same
14 conduct.

15 The only difference really is that the defendant did it
16 for longer than Timothy Turner did.

17 Now, on the other hand, the defendant -- the defendant
18 only gave one case, and that's the case of *United States v.*
19 *Richard Ulloa*. But the defense mischaracterized the facts in
20 that case. While the Court did a guidelines calculation based
21 on actual loss, that came to 21 to 27 months, as the defense
22 stated, the Court actually found that range too low, when
23 considering Ulloa's overall conduct, and sentenced him to
24 60 months.

25 The extent of Yoloa's conduct in that case is far, far

1 less than the extent of the defendant's conduct in this case.

2 Now, an important goal embodied in the sentencing
3 guidelines is the concept of uniformity of punishment. Similar
4 conduct in the federal system should be punished similarly. It
5 simply cannot be a fair and just system if the defendant's
6 conduct in this case, which is virtually identical to
7 Timothy Turner's conduct in the Middle District of Alabama, is
8 sentenced much differently than Timothy Turner's conduct was.

9 So I would like to transition to just talk briefly about
10 the actual offense conduct and the nature of the offense under
11 3553(a).

12 Your Honor, Section 514, which covers fictitious
13 obligations, is a serious crime. As the government noted in
14 its brief, the Court can look to the Congressional Record for
15 the why of 514 being enacted. But the Court should also make
16 note that Congress made it a Class B felony, a very serious
17 felony that's not eligible for a probationary sentence.

18 In other words, Congress did not intend for people who
19 commit this crime to receive probationary sentences; yet that
20 is exactly what the defendant is asking for. The defendant is
21 asking for one day, but the credit received -- the defendant
22 receives credit for being processed by the marshals, so he's
23 essentially only served one day. So it's essentially only a
24 fully probationary sentence.

25 Congress went so far as to not only criminalize --

1 THE COURT: Well, technically, the defense gets
2 around that by saying one day and then followed by supervised
3 release. It ends up having the same personnel handling it, the
4 same conditions. So it's just a matter of nomenclature than
5 anything else.

6 MR. WEXLER: Yes, Your Honor.

7 And Congress went so far as to not only criminalize intent
8 in 514, but also simply possessing fictitious instruments with
9 an intent to defraud is a crime.

10 The breadth of the statute itself speaks to just how
11 serious Congress considered this conduct.

12 Now we're talking about a 20-year pattern of conduct. By
13 the defendant's own admission, the defendant got on the stand
14 and said he's been doing this for at least 20 years.

15 Now, as I mentioned earlier, the Court should consider
16 this relevant conduct that the defendant is promoting, multiple
17 schemes, including this OID scheme, which is widespread and
18 harmful. He's not simply someone who didn't file his taxes and
19 try to defraud the government and banks with fictitious
20 instruments. He's a nationwide, even worldwide promoter of
21 antigovernment fraud schemes. The government put on evidence,
22 as evidence at trial, the defendant's seminar from London, and
23 the defendant has also given seminars in Canada and Australia.

24 THE COURT: Now, in respect to that --

25 MR. WEXLER: Yes, Your Honor.

1 THE COURT: -- has there been any calculation as to
2 the amount of world travel that he's engaged in -- he says they
3 admired him in Australia, and he went to London on these
4 excursions -- as to how that was paid for or what it was -- the
5 costs at all?

6 MR. WEXLER: If I can have a moment, Your Honor?

7 THE COURT: Really, I just need a feeling as to how
8 much travel there was. Were these isolated?

9 Go ahead.

10 MR. WEXLER: Yes, Your Honor. There's at least a
11 half dozen to a dozen seminars that the defendant gave abroad.
12 Most of them are in Canada because it's close. The defendant
13 did give one in Panama, in London, and -- in London, England;
14 in Australia.

15 Right after he was indicted, the defendant went on a
16 cruise to Mexico called the Conspira-Sea Cruise, where he spoke
17 on that. The government provided a citation in its brief to a
18 review of what he actually stated on that cruise.

19 THE COURT: Thank you.

20 You answered my question.

21 MR. WEXLER: Thank you. And, of course, Your Honor,
22 as I mentioned, the promotion activity that the defendant
23 engaged in led to criminal conduct by family members, by
24 friends, and by at least the two dozen cases that the
25 government cited in its brief. But as we discussed, the number

1 is really a lot more.

2 And none of that reflects well on the defendant's
3 character.

4 The defendant, in his brief, seems to view himself as some
5 sort of Robin Hood. But the jury rejected that. They heard
6 the defendant on the stand, and they still convicted him. The
7 defendant knew his family, friends, and customers were going to
8 jail using the things that he was teaching, and he kept going.
9 And the defendant seemed to ignore, in his brief, the fact that
10 one of the fictitious instruments that he was convicted of was
11 sent to the United States Treasury, and it was for payment to
12 him.

13 The defendant's sentencing memo talks about how none of
14 this was payment to him. He was just doing this for other
15 people. But it completely ignores the fictitious instrument.
16 The nonnegotiable bill of exchange the defendant sent to the
17 Treasury for his own benefit. He's not Robin Hood. He's just
18 robbing people.

19 THE COURT: How much for this?

20 MR. WEXLER: That was 1.9 billion, this instrument,
21 Your Honor.

22 THE COURT: Thank you.

23 MR. WEXLER: There are no mitigating health issues in
24 this case. Dr. Pelton's letter, which the government provided
25 to the Court from the Bureau of Prisons, says the defendant's

1 physical ailments are nothing new. In fact, there's an entire
2 system within BOP for handling inmates with physical conditions
3 like the defendant.

4 The case law that the government provided in its brief
5 says that the defendant's age, his advanced age, is not -- does
6 not necessitate a lenient sentence, and the defendant's mental
7 health, frankly, is mischaracterized in the defendant's brief.

8 First, the Court presided over the competency hearing.
9 It's not settled that there's any delusion at all. The Court
10 can completely discard Dr. Martin's report. She did not
11 testify at the hearing. And most importantly, her report does
12 not include any consideration of subculture, which both
13 Drs. Millkey and Lopez said was critical to their analysis. So
14 the Court can discard that.

15 So really the Court is left with Dr. Millkey versus
16 Dr. Lopez. And they come up to differing conclusions. The
17 defendant just relies on Dr. Millkey and completely ignores
18 Dr. Lopez.

19 Second, even if the defendant is delusional, Dr. Millkey
20 was clear that the delusion is not related to the conduct in
21 this case. Dr. Millkey said the defendant believed in aliens.
22 Dr. Millkey never said that the defendant couldn't act
23 purposely or intentionally to defraud somebody, which is what
24 they -- the defendant's sentencing memo actually says that
25 Dr. Millkey -- Dr. Millkey never made that conclusion.

1 Really, the entire mental health issue is just an intent
2 to nullify the verdict. The first attempt was to have the
3 competency hearing itself and to avoid sentencing entirely.
4 And now the second attempt is to claim some sort of diminished
5 capacity. But the jury concluded that there was no diminished
6 capacity at the time of the defendant's actions. There's --
7 there was no discussion from Dr. Millkey or Dr. Lopez regarding
8 whether the defendant was actually suffering from any
9 diminished capacity when he was committing these acts.

10 The defendant can't split the baby. He can't argue that
11 he's led a law-abiding life and poses no threat to society but
12 at the same time has mental issues to prevent him from
13 controlling behavior that he knows is wrong.

14 The fact is that the defendant's mental health, as it
15 relates to his criminal conduct, is fine. It's always been
16 fine.

17 He's always known exactly what he was doing.

18 Your Honor, I just would like to finish with a discussion
19 about deterrence.

20 Now, deterrence is an area that often gets short shrift
21 but is part -- I believe a particular important factor for the
22 Court to consider in this case. First, there is the issue of
23 specific deterrence.

24 The defendant says the issue of one day in prison is
25 sufficient. But we're talking about a 20-year pattern of

1 conduct. The defendant, throughout that period, was repeatedly
2 put on notice of the criminality of its conduct, and it had no
3 effect.

4 When the defendant was indicted, he simply responded with
5 a commercial lien and threats against the Court and law
6 enforcement. He still does weekly and regular podcasts that
7 appear on YouTube and in other venues where he's flouted his
8 case as being part of his larger plan, and the pod -- he gave a
9 podcast the day after his competency hearing in which he said
10 that even though he took down his website, it would all be back
11 when there's a change in government. Whatever that means. But
12 what it does mean is that the government is not deterred -- the
13 defendant is not deterred.

14 It's laughable now that, frankly, the defendant would
15 argue that just one day in jail would deter conduct that's gone
16 undeterred for 20 years. Despite knowing his friends and
17 family were going to prison, his customers were going to jail,
18 he was under investigation for his conduct. He was under
19 indictment for his conduct. He was convicted for his conduct.
20 None of that has deterred him.

21 But, Your Honor, perhaps of even greater importance here
22 is the concept of general deterrence. Frequently, in tax
23 cases, the government highlights the importance of tax
24 enforcement and deterring noncompliance with the tax code, and
25 those are important issues.

1 But more importantly here is that the defendant is a
2 prominent figure in the sovereign citizen and tax defrauding
3 community. As I stated earlier, he had over 1,000 customers in
4 a one-year period, from April of 2014 to April of 2015. The
5 government provided a link to a YouTube video of defendant
6 speaking that has over 160,000 views. This case has been
7 followed by the local press here in Portland. It's been
8 followed by national organizations, like the Southern Poverty
9 Law Center and The Anti-Defamation League.

10 All of this is to say that people are paying attention.
11 People of like mind with the defendant, who see him as a
12 leader, as an authority figure, in a matter of hours, news of
13 this Court's sentence here today will spread throughout that
14 community, and those folks, which is hundreds of people, if not
15 thousands, will either be emboldened by defendant walking away
16 with merely a slap on the wrist and think that their conduct is
17 worth that risk, or they'll be deterred. They will see that
18 the risk is too great, and they won't want to spend a good
19 portion of their lives in prison for that conduct.

20 They'll turn away. They'll choose a different path.

21 And the Court has the power here today to alter the path
22 of hundreds of like-minded individuals. And the government
23 asks that the Court seize that opportunity, consider the
24 government's brief and all that I've discussed here today, and
25 sentence the defendant to 20 years in prison.

1 THE COURT: Thank you, sir.

2 MR. WEXLER: Thank you, Your Honor.

3 THE COURT: Counsel?

4 MR. INIGUEZ: Good morning, Your Honor.

5 Your Honor, I have appeared before this Court many times
6 in the last 20, 25 years. This is probably the single case
7 where I have seen such a difference in perspective between the
8 parties. The government here is arguing that this Court should
9 exercise its sound discretion and sentence this 70-year-old
10 gentleman, whose commission of these offenses resulted in no
11 violence, no actual loss, and I'm asking you to consider all
12 the personal history and characteristics.

13 20 years imprisonment; one day in prison, five years of
14 supervision. That is a big gap. I don't envy the Court's
15 decision. I think what Mr. Wexler just told the Court -- I
16 know the Court is not concerned with public -- the public.
17 It's concerned with justice, fairness, reasonableness, and I
18 wanted to start out by reading what Congress directed the
19 Sentencing Commission 34 years ago when it initiated the
20 sentencing guidelines that we operate under in this courtroom,
21 and I'll quote from Title 28 U.S. Code § 994(j), the Sentencing
22 Reform Act of 1984. And what Congress instructed was that the
23 general appropriateness of imposing a sentence other than
24 imprisonment in cases in which the defendant is a first
25 offender who has not been convicted of a crime of violence or

1 an otherwise serious offense -- this was not a crime of
2 violence. This is a first-time offender. This is an older
3 gentleman who does have a lifetime of accomplishment, who
4 stands before you.

5 I'm not trying to stay that this is not serious. He's
6 been found convicted, guilty of these offenses. But, again,
7 I'll go to the issue that you first addressed with the
8 government, which is the issue of loss here, Judge. And that
9 is why I am objecting to the guideline calculations here
10 because it is undisputed. These over -- I think it was 300
11 documents that they're claiming is relevant conduct, worth over
12 100 -- supposedly \$100 trillion is the purported face value.
13 The fact is not one of those fictitious instruments was
14 negotiated, honored, transacted, accepted by any person or any
15 entity, including the federal government.

16 You heard the government talk about that one document sent
17 to IRS. That, of course, just like what the bank did, was look
18 at it. It's ludicrous on its face. And this, Your Honor, I
19 think, ties directly into the notion that whether the
20 government likes it or not, there are two professional expert
21 opinions, both who found Mr. Shrout to suffer from delusional
22 disorder. I know they want to ignore that and say, "Oh, it's
23 not proven. It's not accepted." It is. We had testimony
24 about that.

25 And that is key in this case, Judge, because if Mr. Shrout

1 was a perfectly functioning individual without a mental
2 disorder, then that would say this person perfectly intended
3 for other people to suffer loss.

4 In fact, no actual loss. I'll get into this issue of
5 \$30 million because I do have a very, I think, strong objection
6 there, Judge. Everything that you're hearing from the
7 government, your questions are well directed, and I think
8 they're getting at the point here.

9 The government, until its submission of this sentencing
10 document and this listing of other cases, listening -- reading
11 their brief and listening to the presentation this morning, it
12 strikes me how much of the government's case is talking about,
13 not Mr. Shrout, but other people, restitution of \$30 million of
14 other individuals in other cases who they claim -- and that's
15 all they do, is claim -- attended a seminar. Read -- read
16 something, listened to a DVD, and somehow, because someone --
17 part of what they read -- you know, my bookshelf is full of
18 books. Simply because I read a poem by Robert Frost, is he
19 culpable for something that I later do because they can show I
20 bought his book?

21 What they want to say is these people committed acts on
22 their own. We don't know anything about those individuals,
23 anything about their characteristics, anything about those
24 facts, and, yet, the government comes in here today and tries
25 to say, "He should be held responsible for everything these

1 other people that we say are somehow associated with him --
2 they attended a seminar, they read a book, and therefore he
3 should be held responsible for something they have already been
4 held responsible for."

5 No one, not Mr. Shrout, no one has that much power to
6 control and direct. Did he not control and direct these
7 individuals. That argument, that use of that amount -- why
8 does the government do this, Judge? Why is it trying to use
9 restitution in other cases as actual loss here? Because it has
10 no actual loss.

11 These instruments, again, undisputed. I would challenge
12 my colleague to tell the Court about any single instrument that
13 was honored by anyone. The answer is he cannot because it did
14 not occur. There is no actual loss. The only loss in this
15 case is the tax loss for the failure to file that the
16 government suffered, that Mr. Shrout agrees he must pay and he
17 will pay.

18 THE COURT: The 191,000?

19 MR. INIGUEZ: I believe the number proven at trial,
20 Judge, was a little over 157. The government is arguing that
21 the Court should allow penalties and interest. It did provide
22 information last week that the defense has not had an
23 opportunity to review.

24 As I suggest, the statute allows us to set over
25 restitution only for a period where we can get to the bottom of

1 exactly how much. But the bottom line is this: It's less than
2 \$250,000. We both agree. Their position is 191; mine is 157.
3 We'll figure out whether the loss and the penalties apply. The
4 reason that less than 250 is important is because when you look
5 at the tax table -- go to 2T1.1, and 1.4 is the table -- that
6 is a base offense level of 16. That is where we should begin
7 this discussion. Not at this level seven plus. Because the
8 loss was over \$100 trillion of intended loss, we're going to go
9 up 30 levels to more than 20 years, that's where the government
10 comes up with this number, Judge. And that's just not -- this
11 case really shows us how the guidelines, try as they might to
12 be reasonable and fair, it's not one size fits all.

13 We have no actual loss. My argument, and, again, it
14 ties -- this case cannot be decided without looking at
15 Mr. Shrout's mental health. And the guidelines define intended
16 loss as purposefully inflicting pecuniary harm or intending to
17 inflict pecuniary harm. Even if it's unlikely, as the
18 government says, or impossible to occur, right, but it has to
19 be intentional, purposeful, and that's why this conduct here
20 does not satisfy the definition of intended loss.

21 The loss we're dealing with really is less than \$250,000
22 under the tax table, and that's where we should start.

23 Now, going back to these other cases that the government
24 is talking about, Judge, you know, my objection is this: The
25 need -- they're really focused on the need to avoid unwarranted

1 sentence disparity. He discusses it. 20 percent of the
2 government's brief addresses that issue, addresses other cases,
3 not Mr. Shrout's case. That's where they would like the Court
4 to spend its time and attention. Not on this unique individual
5 before the Court and that the Court must judge.

6 They discuss the *Marty* case right now orally. A guest
7 speaker. You heard Mr. Wexler admit she, not him, advocated
8 this OID scheme. Not Mr. Shrout; her. She's responsible for
9 her own conduct, but somehow the government wants to say she
10 was a speaker; so, therefore, because she did that, you should
11 attribute that to him and hold him equally or more accountable.

12 Here is really my -- they talked about *Alexio* and *Turner*,
13 too, Judge, but here is the bottom line: The government, in
14 much of its brief, acknowledges Ninth Circuit law that applies
15 but not when it comes to this issue that they spend so much
16 time discussing. Here is the Ninth Circuit law that guides the
17 Court on the issue of unwarranted disparity. We both cited
18 this case, and it's *United States v. Treadwell*. It's a 2010
19 Ninth Circuit case. The citation being 593 F.3d 990. Here is
20 what the Court -- the Ninth Circuit in that case says I would
21 like to quote. A district court need not, and, as a practical
22 matter, cannot compare a proposed sentence for defendant to the
23 sentence of every criminal defendant who has ever been
24 sentenced before. Too many factors dictate the exercise of
25 sound sentencing discretion in a particular case to make the

1 inquiry that the government urges helpful or even feasible.

2 That's at page 1012 of *Treadwell*. It is a bit of a long
3 quote, but I'm going to read it, Judge. Because here is
4 what -- here is what the defendant in *Treadwell* was trying to
5 do, was use the same argument the government was saying. Look
6 at all these other people around the country at other times and
7 in other cases who got lighter sentences. So you should
8 compare me not with the defendants in this case; right? That's
9 what you do with sentence disparities. Look at defendants in
10 their particular case, not at people from all around the
11 country. And the Court shot that argument down.

12 It doesn't matter, for the purposes of 3553(a), said the
13 Court, that the government could point to a specific criminal
14 defendant who may have received a greater sentence for a
15 different fraud. A district court considers the 3553(a)
16 factors to tailor a sentence to the specific characteristics of
17 the offense and the defendant, and they quote from the
18 Supreme Court. It has been uniform and constant in the federal
19 judicial tradition for the sentencing judge to consider every
20 convicted person as an individual. And every case as a unique
21 study in the human failings that sometimes mitigate, sometimes
22 magnify the crime and the punishment to ensue. That's a quote
23 from the Supreme Court.

24 The mere fact that here the government can point to a
25 defendant convicted at a different time of a different fraud

1 and sentenced to a term of imprisonment, greater -- here
2 greater than the defendant's -- does not create unwarranted
3 sentence disparity.

4 For one thing, we aren't presented with the records in
5 those cases on which the government relies. That is really my
6 argument, Judge, that they're asking you to consider something
7 that you should not. It's illegal. They can't ask the Court
8 to consider these other cases when deciding the sentence here.
9 The focus here -- the focus here, as always, is on this unique
10 defendant, these unique circumstances, this particular offense.

11 Judge, I -- I cannot presume, with the Court's
12 experience -- I know this Court has sentenced thousands of
13 defendants. You, better than my colleague, better than myself,
14 can look at this case. I know we have had this case for years.
15 Mr. Shrout has appeared before you several times. Not only at
16 trial, but at the competency hearing. And I trust that the
17 Court can look at this case and say, you know, 20 years
18 imprisonment. Prison? Years in prison? Really? For a
19 defendant who is nonviolent, who's had the kind of background
20 and history -- you can see from his family -- sons, daughters,
21 grandchildren --

22 THE COURT: On that score, I received a letter from
23 his common-law wife.

24 MR. INIGUEZ: Charlotte?

25 THE COURT: What?

1 MR. INIGUEZ: Charlotte Killips?

2 THE COURT: Yes. She says that Winston raised 18
3 children, consisting of 12 sons and 6 daughters. Is that -- is
4 that the correct number? Would you ask him?

5 THE DEFENDANT: Yes.

6 MR. INIGUEZ: Yes, Judge.

7 THE COURT: All right. And apparently all the
8 children have done very well?

9 MR. INIGUEZ: They have.

10 THE COURT: Have been crime-free?

11 MR. INIGUEZ: Yes. Yes.

12 MR. WEXLER: Your Honor, they actually haven't.

13 MR. INIGUEZ: One is a stepdaughter.

14 THE COURT: Well, that was a stepdaughter. That was
15 a separate thing completely. I kept it out before the jury. I
16 keep it out of my thinking for this sentence.

17 MR. INIGUEZ: Judge, you know, the first factor under
18 3553(a), if I may, is personal history and characteristics, and
19 that's really what I'm asking you to consider here, among other
20 things. Not only his age. You know, it strikes me as so
21 incredible sometimes when the government can come in and just
22 pooh-pooh someone's age and health and treat it like it just
23 should not be considered. It should and it must, and Congress
24 has dictated that it should and must.

25 This gentleman has several health issues. I have heard,

1 as I'm sure the Court has, so many times, the government come
2 in and try out the fact that the Bureau of Prisons can take
3 care of this. "It's okay. Send him to prison. He'll be fine
4 with the Bureau of Prisons." There are studies upon studies,
5 most recently from this year, where the Bureau of Prisons is
6 woefully inadequate. They cannot -- they say they can, but
7 they cannot address these sorts of physical health conditions.

8 The government could sit here before you and say that they
9 can, but it's just a claim. The studies bear it out. They're
10 not able to. And that's a factor that the Court can consider.
11 Those health conditions, as we all know, during the past almost
12 three years that he's been on pretrial supervision, with the
13 Court's authority, he's traveled outside the country because
14 it's less extensive get hip replacements, to have his back
15 worked on. He suffers from chronic pain. I -- I think during
16 the time that we've seen him in this process, he's -- his
17 health has substantially deteriorated. The cataracts, the
18 heart condition, the --

19 THE COURT: Hernia?

20 MR. INIGUEZ: The hernias, the condition of his legs
21 that he's about to have treated, Judge. Those are all things
22 that we need to consider.

23 The other thing we just discussed -- and these are, I
24 think, extraordinarily strong family ties and support.
25 Marriages of many years. Ms. Killips, who you just discussed

1 in the letter, that is his common-law wife of almost 40 years.

2 THE COURT: Is she here today?

3 MR. INIGUEZ: She is not -- oh, where is Charlotte?
4 She's right there, next to Ms. Bekken.

5 THE COURT: Yeah, she said in her letter to me that
6 she had been here constantly.

7 MR. INIGUEZ: Your Honor, military service. You
8 know, it's not insignificant. And, again, the government wants
9 to turn it on its head and somehow say, wow, let's treat it --
10 because he stands convicted of offenses that he does, that we
11 should just disregard his military service and treat it as if
12 he's dishonorable. He's not. He served three years --
13 four years in the Vietnam War.

14 THE COURT: Well, he wasn't in the Vietnam War. He
15 was stationed in Okinawa, and he received -- he was a tech
16 sergeant in the Marine Corps, and he served his time honorably.
17 He's a sharpshooter.

18 MR. INIGUEZ: That's right.

19 THE COURT: So he did a good job.

20 MR. INIGUEZ: Judge, also his education. Clearly,
21 and, you know, this is the thing about delusional disorder --
22 and we heard it from the witness stand -- it is not unusual for
23 this to offset in later life.

24 And, I think, Judge -- again, I know you've seen so many
25 defendants, so many witnesses, and what I'm hoping is that it's

1 come clear to us every time Mr. Shrout stands before you that,
2 you know, it's difficult for me to stand in front of a client
3 and say, "I'm sorry, but you suffer from delusion. You don't
4 recognize it. You don't see it, but the experts do." And it's
5 inextricable to sit here and try to disentangle beliefs in
6 people from Pleiades and the fact you're a walk-in from another
7 planet at the age of 5, from the idea that you -- you too were
8 fed these lies.

9 Mr. Shrout did not invent these theories that we're here
10 discussing today. You know, they want to point him as some
11 sort of, I think, a leader, a guru. He did not invent these
12 things. He, too, later in life, read them, listened to them,
13 and was gullable enough and delusional enough to believe them
14 and spew them back out.

15 But we have to consider -- we're not looking at someone as
16 the government tries to portray, a monovalent, greedy terrible
17 person. The evidence is very much to the contrary, Judge.

18 Like I say, I think we've all seen him. I am sorry. But
19 Mr. Shrout is not functioning mentally the same way that
20 Your Honor does, the same way that I do and that the prosecutor
21 does. Those beliefs -- it's a little different; right? The
22 jury found those beliefs -- they found him guilty, but
23 Mr. Shrout, because of that disorder, holds those beliefs. But
24 it goes back to the issue that is critical here of intention
25 and purposefulness.

1 And, again, I think we can't dissect this stuff. We can't
2 say, "Oh, look he got a BS in psychology in 1976, and back then
3 he had a high IQ, so, therefore, this was all purposeful. It
4 was intentional." No. Things happen to people at different
5 points in their lives.

6 THE COURT: His IQ is labeled at 136?

7 MR. INIGUEZ: Back in the day.

8 THE COURT: That was the Marine Corps level. Do you
9 have anything more fresh?

10 MR. INIGUEZ: No, I don't, Judge. I'm sorry.

11 I do know the IQ you're preferring to, I think, was back
12 at 40, 45 years ago.

13 THE COURT: Yeah.

14 MR. INIGUEZ: Yeah. Judge, his employment history as
15 well. A very long career of hard work supporting that family.
16 He worked hard. A journeyman carpenter for 20 years. He
17 worked for the government with a clearance. All these things
18 have to be considered.

19 Again, I can't stress it enough.

20 THE COURT: Journeyman carpenter?

21 MR. INIGUEZ: Yes. That's right, Judge.

22 THE COURT: Apparently.

23 MR. INIGUEZ: Yeah, for 20 years. And then he's been
24 retired. And that, Judge, I think, again it coincides with the
25 end of his employment, retirement, the onset of this disorder,

1 and that's when these things start.

2 Again, not violent offenses. Congress says, you know,
3 when you've got a violent offender, sentence of imprisonment
4 should be presumed. But when you don't and it's a first-time
5 offender, the presumption is the other way. There should not
6 be prison.

7 Again, no actual loss. No intended loss. The commission
8 of the offenses are inextricably intertwined with delusional
9 disorder. I'm asking -- the government acts like it's no big
10 deal, but we have a felon -- convicted felon, who I believe --
11 I strongly believe supervision by this Court will go the same
12 way that supervision by the Court has for the last three years.
13 He will comply. He will comply now more than ever because, as
14 you just heard, the day after the competency hearing, he shut
15 down the website. We've discussed the fact of these conditions
16 that we agree with. No further conduct, behavior -- it's not
17 really employment, but whatever we want to call it, regarding
18 seminars, books, DVDs, tax laws, anything, it's over with.
19 It's done. He's complied with -- for three years. He will
20 comply with five years, Judge. This is not, I think --

21 THE COURT: How many books did he author?

22 THE DEFENDANT: Three.

23 MR. INIGUEZ: Three books, Your Honor.

24 THE DEFENDANT: One all on UFOs.

25 MR. INIGUEZ: One on UFOs.

1 THE COURT: Thank you.

2 MR. INIGUEZ: Judge, five years of supervision. We
3 don't have this -- this idea of future harm, future crimes. I
4 think we can tell from his past, before the onset of this
5 disorder, before these offenses for which he stands convicted,
6 no crimes. None at all. As a juvenile; as a young adult. Now
7 that he's been made fully aware, regardless of his disordered
8 beliefs, he understands now fully this is over. It's done.

9 So when I look at -- here is one of the things I look at:
10 When we have a case where there's tax loss -- as I say, that's
11 the only loss; right? This idea that we should be sentencing
12 this gentleman for hundreds of trillions of dollars, as I point
13 out in my brief, that's outrage. Everybody knew it was
14 outrageous. No one acted on it because it's so, I'm sorry,
15 crazy.

16 Only three of these documents for which he was convicted
17 were worth less than the gross domestic product of the world's
18 leading economy -- the United States. That's insane; right?
19 If I were to get a piece of paper by anybody that said it was
20 worth trillions of dollars, I would have to laugh. I'm not
21 going to believe that. No one is going to believe that. This
22 was not only impossible or not likely to occur, it would never
23 have occurred. And, in fact, it did never occur.

24 THE COURT: Well, he also wanted to have all those
25 trillions of dollars to bail out the people who suffered

1 foreclosure from the fall of 2008. That was his goal.

2 MR. INIGUEZ: Isn't that, Your Honor, on its face,
3 when I hear that, although, I think, well, that's well-meaning,
4 but that's incredible. The fact that anybody would believe
5 that they single-handedly had the power to write up a document,
6 put a number on it, and solve the world's problems -- it sure
7 would be nice if that's how things worked. But I think, again,
8 Judge, I think we all know from our own personal experience,
9 that is a strong indicator of just how disordered this
10 particular mind is.

11 I wish I could solve the world's hunger crisis by writing
12 a check, but I can't. No one can. Most of us know that.
13 This, I think, Judge -- to sentence this man to prison, my
14 humble opinion, would be a travesty.

15 I know the government wants to, for lack of a better word,
16 scare, threaten, impress upon at least, the Court that, "Oh, my
17 God, if you were to send him home and supervise him and
18 give him -- let him have the medical treatment and mental
19 health treatment that he needs, all these people out there in
20 the world are going to be emboldened. They're all watching,
21 Judge. Hours from now everybody is going to see what you did,
22 and, wow, you should be really harsh, not consider the
23 individual circumstances. Look at all these people and what
24 happened in their cases that we don't have any information for
25 you about, other than our claim that they're somehow related

1 here, and treat him the same way. Forget about who he is as an
2 individual. Forget about everything we know about him. Don't
3 do the just and reasonable and fair thing, but be vindictive
4 and be harsh, as we would like you to do."

5 I know this Court has the perspective to put this case in
6 perspective with other cases.

7 Judge, you know, I'm not going to -- I'll deal with the
8 issue of restitution just briefly for this purpose. Again,
9 we're between -- we're less than 250,000, but between 157 and
10 191. I think we can decide that issue with finality in due
11 course.

12 Supervision. Five years will allow the repayment of
13 restitution. If, in fact, what the government is after is not
14 an eye for an eye but recompense --

15 THE COURT: How is he going to pay any restitution if
16 he's got multiple disks, still is disabled, has no other
17 source -- he can't return to carpentry. How in the world is he
18 going to pay anything, realistically? Certainly not selling
19 books.

20 MR. INIGUEZ: Not at all.

21 THE COURT: Or conducting seminars.

22 MR. INIGUEZ: That is for sure.

23 THE COURT: That may be a moot issue.

24 MR. INIGUEZ: Actually, Judge, you know, when we keep
25 talking about here the loss, the actual tax loss was the amount

1 of taxes due. Not all of his income is from this scheme.

2 His income -- he had a considerable amount of income from
3 a pension because of that 20 years as a carpenter, a journeyman
4 carpenter. So I would respectfully submit that that is where
5 that money can come from, as -- in addition to family members
6 and friends that want to help him.

7 But I think he can do that. In prison, he can't.

8 THE COURT: You have 90 days to resolve that issue.

9 MR. INIGUEZ: Yes.

10 THE COURT: After I sentence.

11 MR. INIGUEZ: Thank you, Judge.

12 THE COURT: I would like to hear from the government.

13 MR. INIGUEZ: Judge, if I might just make one other
14 point, since we're talking about, it seems like, money, I just
15 wanted to note one thing I find rather remarkable. That's the
16 cost of imprisonment for 20 years versus supervision.

17 THE COURT: \$36,000 a year.

18 MR. INIGUEZ: Or \$726,000 total versus \$21,000.
19 That's three percent of the cost of prison by putting him on
20 supervision. If we're really at the government -- if the
21 government is really concerned about money, it does not make
22 sense.

23 Thank you, Judge.

24 THE COURT: All right. We'll take a recess so you
25 can regroup here, and we'll pick up in ten minutes.

1 MR. WEXLER: If you want, Your Honor, I'm ready to
2 go.

3 THE COURT: Well, we have a court reporter.

4 MR. WEXLER: Thank you, Your Honor.

5 THE COURT: Thank you. We'll take ten minutes.

6 (Recess taken.)

7 THE COURT: Counsel.

8 MR. WEXLER: Thank you, Your Honor.

9 Your Honor, Mr. Iniguez's comments earlier are --
10 essentially amount to a second try at closing argument. All of
11 the arguments regarding the defendant's conduct were made
12 during trial, and the jury found none of those arguments
13 compelling and convicted the defendant for all of the conduct
14 that Mr. Iniguez now says nobody could possibly believe.

15 The jury believed him, and they convicted the defendant.
16 The verdict -- the defense is asking for the judge to impose
17 your judgment in lieu of the jury's verdict.

18 He's saying that the seminars that he conducted had no
19 impact at all; that people, for some reason, attended them for
20 no reason; that they paid hundreds of dollars to attend them
21 for no reason; that they asked him for private coaching for no
22 reason; and that his -- the fact that his stepdaughter went to
23 jail is mere coincidence.

24 MR. INIGUEZ: Your Honor, I object. It's repeated
25 reference despite your admonition to the stepdaughter and her

1 conviction, Your Honor.

2 MR. WEXLER: Your Honor --

3 THE COURT: Let's leave the stepdaughter out of it,
4 period. You don't need it. You have plenty other to talk
5 about.

6 MR. WEXLER: Very well, Your Honor.

7 THE COURT: I don't know how you -- you want to get
8 into a subject that is -- is not helpful to the Court. I've
9 made that clear to you.

10 Now, I want is help from you as to what the guidelines
11 should be and what the -- your -- your rebuttal is to what
12 counsel has to say.

13 MR. WEXLER: Yes, Your Honor.

14 THE COURT: He didn't say anything about the
15 stepdaughter, did he?

16 MR. WEXLER: There is a reason for that, Your Honor,
17 but I'll move on.

18 THE COURT: Please do.

19 MR. WEXLER: Thank you. Your Honor, regarding
20 restitution, there's no need for a 90-day extension for
21 resolving restitution. The government provided a number.

22 THE COURT: I would like to get right to the essence
23 of the case.

24 MR. WEXLER: Very well, Your Honor.

25 THE COURT: The restitution is a minor, minor matter.

1 Let's just talk about what rebuttal you have to his argument.

2 MR. WEXLER: Yes, Your Honor.

3 Mr. Iniguez talked about the defendant's unordered mind
4 and that he read all of his stuff and his delusions caused him
5 to believe it. The government put on video evidence at trial
6 where the defendant stated that he was making up these
7 documents, that he was changing the documents to make them more
8 successful, to have a better chance of working.

9 In fact, he said, "We added this stub so that it would
10 look more official." That's evidence of an ordered mind.
11 That's evidence of someone who's making stuff up of their own,
12 and that's why people paid the defendant to come to his
13 seminars.

14 If he was just repeating what everybody else is repeating,
15 why did they come to him? They came to him because he had new
16 stuff. He was working hard on creating all of these new
17 documents, and that's why they paid him. And they used it to
18 their detriment, and they're in jail, and they're paying
19 restitution.

20 Mr. Iniguez talks about \$36,000 a year. All the
21 defendants that used the defendant's scheme and are now in
22 jail, the government is paying for them to be in jail. Why
23 would they -- the government have to pay for them to be in jail
24 but not the defendant who taught them the scheme?

25 And regarding the connection between those cases,

1 Your Honor, as the government has stated in its brief,
2 Agent Hill is here and available to testify. If the Court
3 wants to hear as to how each of those cases are connected to
4 the defendant --

5 THE COURT: I do not.

6 MR. WEXLER: Very well.

7 Your Honor, I sort of glanced over this, but now I see
8 that perhaps I shouldn't have given it short shrift in my own
9 argument, but the tax system is one of voluntary compliance,
10 and Mr. Iniguez says the Court shouldn't be considering
11 punishment here. But punishment -- the fact of the matter is
12 punishment is an essential deterrence. People will look at
13 Mr. Shrout, who didn't -- by his own admission, didn't file or
14 pay taxes for 20 years. And if he walks out of this courtroom
15 today and just has to spend some time in his house -- which, by
16 the way, is where he broadcasts his YouTube podcasts from
17 anyway -- that in no way is going to encourage somebody to
18 comply with a voluntary compliance system. Instead, it's going
19 to embolden them to not comply. Punishment is an essential
20 aspect of the sentencing regime. To completely ignore it, I
21 think would be improper for this Court.

22 Another example of the Court's order -- the defendant's
23 order of mind, Your Honor, is the government put on evidence
24 from an undercover agent Mark Morini at trial. And Mr. Morini
25 testified to how he went through an extended back and forth by

1 email with the defendant about producing a fictitious financial
2 instrument.

3 The defendant said, "Do this." Agent Morini tried it and
4 sent it back. Defendant said, "No, no, no. You have to change
5 this, change this, change this, and do that."

6 That's not delusional. That's focused and -- a focused
7 fraud that the defendant is well aware of. There's nothing in
8 the defendant's mental history -- in fact, Mr. Iniguez stood up
9 at the *Faretta* hearing so many months ago, years ago, and told
10 this Court, "The defendant is competent. The defendant is
11 competent to represent himself at trial."

12 The judge asked, "Mr. Iniguez, do you know of any reason
13 why I should not find this defendant competent?"

14 Mr. Iniguez, "No, Your Honor. I spent a lot of time with
15 him. He's perfectly competent."

16 That's what Mr. Iniguez said, and now Mr. Iniguez is
17 coming back saying, "He was crazy the whole time. He couldn't
18 possibly have known what he was doing."

19 You can't have it both ways, and he's not crazy. I mean,
20 there's no evidence of that.

21 THE COURT: Well, that's correct. The
22 psychiatrist -- psychotherapist, at least as far as I'm
23 concerned, found that he does not suffer from a specific
24 psychosis, delusional disorder, but is grandiose.

25 I think that was the fair conclusion that he was

1 competent, and that's why we're having this hearing today,
2 because I have found him competent.

3 MR. WEXLER: Yes, Your Honor.

4 And Mr. Iniguez continues -- Mr. Iniguez brought attention
5 to this -- what he thinks will be the effect of the Court
6 sentencing the defendant here today to just one day in prison
7 by referring to the fact that the defendant took down his
8 seminar advertisement two weeks ago.

9 And the Court should really take note that part of the
10 defendant's release conditions was to not have that seminar.
11 So just by advertising it, he was in violation of his release
12 conditions. He advertised it years after he was indicted in
13 this case, and then -- and he was going to have it the weekend
14 before -- this past weekend. His sentencing is today. The
15 seminar was scheduled for this past weekend. The only reason
16 the defendant took down the seminar application and took down
17 his website is because the Court told him specifically, at the
18 competency hearing, "If you don't do this, I am going to
19 sentence you more harshly." That's the motivation. He knew
20 that the gambit was up. All his delays had been expended.
21 Sentencing was facing him, and the Court told him, "Hey, if you
22 don't do this, you'll face a harsher penalty." So it came
23 down.

24 The day after the competency hearing, he went on YouTube
25 and said, "It's all coming back up. Just wait for the change

1 in government." Who knows what that means? But it's clear
2 that the defendant took it down for the sole reason of getting
3 favor with the Court today and out of no intention to comply
4 with taking it down forever.

5 And with -- I'll -- I'll pass on that last thing I was
6 going to mention.

7 THE COURT: That's okay. When I wave you off of a
8 couple of issues, I'm trying to give you the direction that I
9 really need. There's no criticism to you. You've been
10 doing -- as all counsel, you've been doing an exceptionally
11 professional job. Thank you.

12 MR. WEXLER: Thank you, Your Honor.

13 And throughout this process, the defendant has shown no
14 remorse. After he was convicted, he's been on YouTube. It's a
15 weekly podcast, as the government put in it's sentencing brief.
16 It's called the GoldFish Report. He appears weekly on that
17 report. And ever since he was convicted, ever since he was
18 indicted, he's never shown one ounce of remorse. He's never
19 apologized to anybody who ended up in prison. He never did
20 anything to even -- he admitted he did the conduct on the
21 stand. He admits that he does this all -- on all of his
22 videos. But he's never apologized, never shown an ounce of
23 remorse for any of this conduct.

24 And, I mean, to use a metaphor, he's not just trying to
25 rob a bank. He's actively and consistently advocating for

1 others to rob the bank and telling them there's no -- there's
2 no problem; there's no penalty. He's telling them that this is
3 legitimate; this is what you should do.

4 And now he says that the Court should ignore all of that
5 and simply focus on his charged conduct and focus not on the
6 fictitious instruments, but just focus on that he didn't pay
7 taxes.

8 I mean, as -- as I said, Your Honor, 514 is a serious
9 crime. And, yet, the Court should not just simply ignore all
10 of that conduct because there happens to be an ascertainable
11 loss associated with his failure to pay taxes. The guidelines
12 provide and Ninth Circuit case law provide a framework for the
13 court to use in these types of situations, and that's using
14 intended loss.

15 And I -- Your Honor, it just -- it would be -- I'll
16 rephrase that, Your Honor.

17 THE COURT: Careful.

18 MR. WEXLER: Yes, Your Honor. I guess one last thing
19 I want to -- I just want to point this out. I believe I
20 pointed it out in my brief as well. But when the defendant met
21 with Dr. Millkey, Dr. Millkey asked him if he understood "Why
22 are you meeting with me?" And the defendant said -- and this
23 is from Dr. Millkey's report -- "the public defender has a
24 conscience and thinks I was railroaded. He's trying to
25 backtrack without getting an appeal. The shortcut is getting

1 me declared weird."

2 That's what this is all about. That's what their entire
3 argument is all about. It's about undoing the jury's verdict,
4 trying to avoid an appeal, and just having the Court look at
5 the defendant, who looks elderly, looks frail, walks with a
6 cane, all -- and the government doesn't -- you know, he -- he
7 is the age that he is. He has the ailments that he has. But,
8 I mean, to use a cliché, don't judge a book by its cover,
9 Your Honor. You are what your record says you are.

10 And the defendant, for at least 20 years, is a tax cheat
11 and an individual who has convinced others to scheme against
12 the government and perform their own frauds on top of his, and
13 he's responsible for significant harm to the United States, and
14 he should be sentenced accordingly.

15 Thank you, Your Honor.

16 THE COURT: Thank you, sir.

17 MR. INIGUEZ: Judge, may I just respond very briefly
18 to a few points?

19 THE COURT: No.

20 MR. INIGUEZ: No? Just --

21 THE COURT: We have the opening argument, your
22 closing argument, and the rebuttal.

23 If you're bursting with some -- one sentence.

24 MR. INIGUEZ: Just four points, Judge, in terms of --

25 THE COURT: All right.

1 MR. INIGUEZ: -- what he read about Dr. Millkey, he's
2 right. I have a conscience. I thought from the beginning of
3 this case, had I been counsel I would have raised this issue at
4 the beginning of the case. That's why I told Mr. Shrout, "It's
5 too late to," as he says, "undo the convictions." But we have
6 to raise this issue because I have an ethical obligation.
7 That's the one point.

8 The issue of no remorse. You also heard -- it's
9 antithetical. You just heard him admit. And this is what
10 happened at trial. Mr. Shrout admitted he didn't pay taxes.
11 He admitted the six counts of the taxes. And he admitted that
12 he produced and shipped these instruments. He made those
13 his --

14 THE COURT: Okay. That's enough.

15 MR. INIGUEZ: Okay. So he has shown remorse, Judge.

16 THE COURT: Thank you.

17 You can make a statement if you choose to do so.

18 THE DEFENDANT: Is it on?

19 MR. INIGUEZ: Yes. You press it. There you go.

20 THE DEFENDANT: Just a few short comments. I'm
21 really sorry about all of this trouble we had to go through to,
22 you know, get to the point we're at today.

23 THE COURT: You're not under any time constraint.
24 The other issue was procedural. You have all the time you
25 want.

1 THE DEFENDANT: Well, like I say, I'm not here to
2 retry the case or anything like that. You know, I've been
3 studying the law, if you will, for, gosh, I don't know, well
4 over 20 years. Some of it seems to be pretty simple and some
5 of it seems to be pretty confusing, so -- but I have made an
6 attempt, you know, in my life to understand these things, and I
7 have drawn conclusions I have about things from things I've
8 studied.

9 So, anyway, in regards to this whole matter about remorse,
10 yeah, I'm very sorry just this whole thing happened. It's --
11 it's been very confusing for me to understand how it happened
12 and why and so forth. But as mentioned, at the time of trial I
13 took full responsibility for exactly what I have done. That's
14 the way I was trained. That's the way I was taught as a child.
15 You know, you take responsibility for what it is you do right
16 or wrong.

17 Any regards to this -- this business with the psychiatrist
18 and so forth, let me just say some of the comments I made to
19 them would be considered tongue-in-cheek. My mother was a
20 psychiatric nurse for all -- basically all her career and --

21 THE COURT: Your father was a prison guard?

22 THE DEFENDANT: Yeah, uh-huh.

23 Anyway, my mother had a certain disdain for psychiatrists,
24 because she didn't believe they were helping the patients, and
25 so she passed it on to me. So sometimes when I get in the

1 presence of those type of professionals, I think some of my
2 mother rubs off on me, you know, when I make comments to them.

3 In regards to -- you know, certainly I have no intention
4 of continuing on in these matters that seem objectionable, you
5 know, to the Court and to the government and so forth. I had
6 not -- when I started out, I had no belief that they would be
7 objectionable. But apparently it turned out that they are.
8 And so if I have offended in any manner, then I ask your
9 forgiveness. I mean, I was taught to do that a long time ago.

10 And in regards to -- to some of the subjects, he talks
11 about these podcasts and things I do. You know, that's true.
12 But the subject matter that we go over in those has to do with
13 the teachings in the Kings James Version of the Holy Bible. If
14 you go and listen to them, we try to -- or I try to relate our
15 present world to the circumstances and bring it forward from
16 2,000 years ago to see how that applies in our modern society,
17 hopefully, so other people will have a better life.

18 So, again, you know, when we start to talk about
19 intention, I have never had any intention to harm anyone or
20 anything. And if -- if I have offended or harmed someone, then
21 I'm truly sorry, and I would simply ask your forgiveness.

22 And also to the matter in regards to all the things that
23 have gone on, I freely forgive others as well.

24 So that's basically all I have to say, Your Honor.

25 Thanks.

1 THE COURT: Very well.

2 In respect to this matter, if you would please stand.
3 Well, you can sit down. You can just sit down if it's more
4 comfortable.

5 MR. INIGUEZ: Thank you, Judge.

6 THE COURT: As defense counsel pointed out, I perhaps
7 never or seldom have seen a case of what -- such a range in
8 requested sentences from 20 years to essentially no sentence at
9 all. The case has been complex, to say the least. The
10 representation has been remarkable. I could not have asked for
11 a more helpful professional presentation from the government or
12 from the defense. They have been very honorable and
13 straightforward.

14 The defense has had to work with the handicap of being an
15 advisor, as opposed to regular counsel, and has done an
16 outstanding job in that limited capacity.

17 As far as the defendant is concerned, he is also a very
18 remarkable person. 70 years. He came from a stable family; a
19 religious family. He did his service to his country honorably.
20 He has never had a criminal issue. He has not had any
21 substance abuse. He had a brother who was a terrible alcoholic
22 and died of it, but other -- he stayed away from that. He has
23 never abused alcohol or drugs in his life. He has enormous
24 support from all the people that know him. They besieged the
25 Court, to which I welcome, with kind comments about his

1 generosity and helpfulness to other people.

2 But, as they say, the other side of the story is he has
3 grandiose ideas as to who he is and what he can do. He is not
4 psychotic, as the psychiatrist said, but he believes he is a
5 descendant of Christ and Mary, that he comes from a different
6 planet, that he is a nonresident alien, that he was put in a
7 form as a human at age 5. These things he believes to this
8 day.

9 He says that the federal government is not -- doesn't have
10 control over him, that the federal government need not be
11 obeyed, that the -- he has some -- the usual sovereign nation
12 lack of mentality of thinking the Uniform Commercial Code
13 controls our government and all their other totally
14 unacceptable beliefs. The -- you are not being sentenced
15 because of your bizarre beliefs. You are being sentenced
16 because of your conduct. You definitely feel that you are
17 smarter than most everybody you encounter. You have become
18 their teacher. You want to be called the head of your
19 organization. You want to be recognized as a highly -- high
20 intellectual with a vast knowledge of the law. Unfortunately,
21 that isn't the case.

22 You have been a nonproductive person. You have advocated
23 hundreds, if not thousands, of people through the years that
24 they need not pay their taxes and support our government. That
25 is not acceptable.

1 When you tell people that they should violate the law --
2 the tax laws, you are advocating other people to violate the
3 law. The fact of the matter is other people have followed your
4 instruction and tutelage and have violated the law.

5 There is almost no way to track the amounts of money that
6 were actually not reported by your many, quote, students, end
7 quote. But there's no question, in the Court's mind, that you
8 intended -- your intention was to sign these documents and
9 have them be effective for trillions of dollars. And your
10 motive was to rescue the people that were besieged with
11 foreclosures under the 2008 crash. This is what you believe
12 and what you did.

13 When you add up the -- your -- this was your intention.
14 Whether anybody was a damfool to follow them is another matter,
15 but the -- the guidelines call for relevant conduct from
16 262 months to 327 months. That's the calculation, and it's
17 based upon what you intended for people to act. Whether they
18 would be, as you used the phrase, crazy enough to act on these
19 concepts, that's up -- that's irrespective -- that's
20 irrelevant. It's what you intended to do, and that is no
21 question that you intended to do that.

22 But then the guidelines are discretionary. We have
23 a guidelines -- I hesitated to mention this, but
24 Judge James Burns and myself were strong advocates of the
25 guidelines. We taught sentencing guidelines to -- nationally,

1 to 120 judges at a time, and we give them a set of facts,
2 including a homicide that happened in a barroom. And the
3 disparity that we received ran from probation to death in the
4 judges that were there. So we felt very compelled to support
5 the sentencing guidelines.

6 Judge Burns was a member of the Sentencing Commission. I
7 fought for the same thing on the state level with Judge Beatty.
8 But they are still advisory. You just cannot put into
9 individuals a set of numbers. But we start out with the
10 guidelines, but they are advisory only. And, thank heavens, in
11 this case, they are not mandatory.

12 The recommendation of the government is for 20 years. The
13 recommendation for -- from the presentence writer is for
14 15 years. My sentence -- and you will be going to prison -- is
15 for 10 years. Because you're 70 years old, you not only have
16 your eye problem and your hernia problem, you -- and your disk
17 problems, you also have other problems of your general health,
18 that this may well be a life sentence. I'm well aware of that.
19 But you will -- I'll be recommending the facility that the
20 government -- Bureau of Prisons best recommends for a person of
21 your age and your disability.

22 I think that you can be accommodated right here at
23 Sheridan where you will be near your beloved lady who's here
24 today. And your family -- a lot of them are Utah, where you
25 went -- graduated from college. But the final call will be

1 Bureau of Prisons. Unless I hear otherwise, I'll recommend
2 Sheridan facility.

3 There will be no fine. The fee assessment for all
4 accounts totals \$1,450. I can set the restitution at
5 \$191,226.10 at this time, but if you wish to be heard and
6 challenge that, that can be done after he starts -- after the
7 Bureau of Prisons makes their selection as to when and where he
8 should report.

9 I am concerned about releasing you to clear up your
10 matters because of your activity and being able to travel
11 internationally and into Canada willy-nilly.

12 I just know that you have been very faithful in reporting
13 to the Court as directed and that I will need your personal
14 problem from -- promise from you to me that you will appear as
15 directed by the marshal to the institution if I allow you to
16 self-report.

17 THE DEFENDANT: Yes.

18 THE COURT: You make that promise?

19 THE DEFENDANT: Yes.

20 THE COURT: And you know that if I -- you don't and
21 you are ever caught and if I'm still around, I'll give you the
22 maximum. You understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. You do have a right to
25 appeal. Counsel can raise the issues that he wishes to raise.

1 At that time, I accept the presentence report as written with
2 the conditions of supervised release, except that you do not
3 need conditions about alcohol or substance abuse.

4 Are there any objections to the other criteria?

5 MR. INIGUEZ: Your Honor, I would only maintain the
6 objections that I made in writing with respect to the
7 presentence report's guideline calculations.

8 THE COURT: Yes. I'm talking about conditions of
9 supervised release.

10 MR. INIGUEZ: Right. No objections to those,
11 Your Honor. Just the two points you raised that might warrant
12 some discussion. First, if you would see fit to recommend the
13 federal prison camp at Sheridan, I think that would be
14 appropriate, given his age.

15 THE COURT: That's where we put the bankers and the
16 lawyers and the like.

17 MR. INIGUEZ: Thank you, Judge.

18 And with respect to restitution -- well, restitution, I
19 guess, ties in with the self-surrender issue. If we can set --
20 the restitution hearing, we have up to 90 days -- that would be
21 my calculation -- is the very beginning of January. I think I
22 have January 9th. If we can set it a couple of days earlier,
23 it may be that the parties can try to resolve that issue. If
24 so, we'll inform the Court that the hearing is not necessary.
25 But if we can set the hearing for January 7th, and I would ask

1 the Court to set a self-surrender date two weeks after that
2 hearing date for Mr. Shrout.

3 THE COURT: I don't know what you're talking about.
4 What that adds up to be -- normally, we have 30 days. No.
5 Becky how long do we have?

6 DEPUTY COURTROOM CLERK: Usually they turn themselves
7 in within 30 days.

8 THE COURT: He'll be directed to follow the
9 availability at the Sheridan facility, if that's where the
10 person is going to be designated within 30 days.

11 As far as restitution, I want you to clear that up
12 within 30 days.

13 MR. INIGUEZ: Okay. So we'll -- so we'll --

14 THE COURT: Get it all behind us.

15 MR. INIGUEZ: 30 days for both surrender and --

16 THE COURT: And restitution.

17 MR. INIGUEZ: And restitution.

18 THE COURT: Final restitution. I expect you to
19 resolve that.

20 MR. INIGUEZ: Very good.

21 THE COURT: The amount of restitution, I often waive
22 interest, if that's any help.

23 MR. INIGUEZ: That is one of the issues, Your Honor.
24 That's one of the issues.

25 THE COURT: He's going to have a tough time paying

1 the 151,000.

2 MR. INIGUEZ: Judge, just for the issue of the
3 self-surrender, I do have his passport, and I'm prepared to
4 give this to Pretrial Services. You have his word and he'll be
5 appearing in 30 days.

6 THE COURT: Yes?

7 THE PROBATION OFFICER: Your Honor, we just ask for
8 clarification that Counts 1 through 13 he's sentenced to 120
9 months and then Counts 14 to 19 for the statutory maximum of
10 12 months, all to run concurrent to each other, with five years
11 supervised release.

12 THE COURT: And supervised release, yes.

13 THE PROBATION OFFICER: Thank you.

14 THE COURT: Any further questions from the
15 government?

16 MR. WEXLER: No, Your Honor.

17 THE COURT: Anything further for the defense?

18 MR. INIGUEZ: Not at this time, Your Honor. Thank
19 you.

20 THE COURT: Thank you. Court is in recess.

21 (Hearing concluded.)
22
23
24
25

C E R T I F I C A T E

United States of America v. Winston Shrout

3:15-CR-00438-JO

SENTENCING

October 22, 2018

I certify, by signing below, that the foregoing is a true and correct transcript of the record, taken by stenographic means, of the proceedings in the above-entitled cause. A transcript without an original signature, conformed signature, or digitally signed signature is not certified.

/s/Jill L. Jessup, CSR, RMR, RDR, CRR, CRC

Official Court Reporter
Oregon CSR No. 98-0346

Signature Date: 10/29/18
CSR Expiration Date: 9/30/20